Presentation to the Financial Services Privacy Summit
Toronto, April 30, 2003

An apparent lack of concern about the arrival of PIPEDA among financial institutions in the Atlantic Provinces reveals either that they are all quite comfortable with this or they haven't yet learned enough about it to raise any concerns. It became obvious during my research that not many financial institutions have given it much thought.

If the latter is true then an education program should be provided to them as soon as possible.

The organizers of this summit have charged us to provide our views on a number of matters and to answer some questions.

The latest developments in provincial privacy legislation:

In the Atlantic Provinces there appear to be no new developments in this area. None of the Provinces is considering passing substantially similar legislation before January, 2004. They may be waiting to see how it works and if they think it doesn't they may decide to introduce their own legislation.

Evaluating Atlantic Canada's decision to accept PIPEDA.
What are the advantages of enacting provincial legislation versus allowing PIPEDA to take over?

Our research found that financial institutions saw no advantages to provincial privacy legislation. A canvas of financial institutions in the Atlantic Provinces, reveals they are more comfortable dealing with what they know (PIPEDA) than with any proposed provincial privacy legislation. The independent business people told me they are happy enough with PIPEDA because there is no requirement for a regular reporting system.

As you know, financial institutions already have policies to ensure the confidentiality of the personal information they are provided with. It's good business, as Ann

Cavoukian will tell you later. But in 2004 they will have to comply with the law, not just with their policies.

Presumably the governments of the Atlantic Provinces are satisfied that the two goals of privacy regulation will be met with PIPEDA:

- individual privacy rights will be adequately protected; and
- PIPEDA provides a reasonable and efficient way to regulate financial institutions, such that their economic interests are not unduly interfered with?

Present and Future:

A comparison between the requirements of PIPEDA and the present regulations which the financial institutions live under, will help to determine what practical changes may result when the Act takes effect.

If their current privacy policies are already consistent with the requirements of the Act, there may be little impact. If PIPEDA offers a stronger guarantee of individual rights, financial institutions will have to adjust.

The federal Privacy Commissioner describes the three "key" components to the substantive obligations of PIPEDA and they are what one might expect since all privacy legislation includes them:

- Consent: except for limited circumstances found in section 7 of PIPEDA.
- Reasonable Purpose: What a reasonable person would consider appropriate under the circumstances.
- Access and Correction Rights: Individuals must have access to their own personal information and the ability to correct mistakes.

It's unlikely financial institutions would not be required to make some adjustments. They will be required

1 to designate a "privacy officer" from within;

2 to clearly identify and document the purpose for collecting the personal information;

3 to obtain the consent of customers;

4 to retain the personal information only as long as necessary to fulfill the identified purposes;

5 to update personal information used; to secure the information against loss, theft or unauthorized access purposes; and, of course,

6 to facilitate access and;

7 to adopt procedures to respond to complaints from individuals and inquiries from the privacy commissioner.

As I noted earlier I have heard no concerns from Atlantic financial institutions about these obligations.

In Nova Scotia, as well as other Atlantic Provinces, the privacy policies of financial institutions are now regulated in two ways: through self-regulation; and by the provincial governments' Financial Institutions Divisions. The regulators are known by different titles in the four provinces but I will refer to them as the Nova Scotia Government does - Superintendent of Financial Institutions.

Nova Scotia's Financial Institutions Division is part of the Department of Environment and Labour headed by the Superintendent of Financial Institutions. The division regulates the operations of credit unions, trust and loan companies and insurance companies, agents, brokers and adjusters. The Superintendent also provides a complaint and inquiry service.

It regulates privacy in the industry by working with the Canadian Council of Insurance Regulators (CCIR) and participating in a Joint Forum for Financial Market Regulators. Through these organizations the Nova Scotia government follows a number of "Practices and Policies for the Sale of Products and Services in the Financial Sector" including provisions for the effective regulation of privacy of "personal information".

The policy statement requires a number of confidentiality principles to be incorporated into financial service companies' codes of conduct:

- Companies must protect their clients' personal information;
- They must take all reasonable steps to ensure financial information is not

divulged or is only used for the purpose for which it was collected "unless the client provides proper authority as required by applicable laws and regulations to divulge personal information to others for reasonable purposes".

- They must not use personal information to the detriment of the client.

The policy defines "personal information" as "information that a client would expect to remain confidential because it was conveyed for the purpose of the financial transaction".

While the principles stated in the Joint Forum are similar to the requirements of PIPEDA, there are differences... the Joint Forum does not specifically address the collection, use and disclosure of personal information; and it's definition of "personal information" is not the same. According to PIPEDA any information that identifies an individual is subject to privacy legislation, not just information an individual would expect to remain confidential.

As a result, the implementation of PIPEDA may result in changes to the content of privacy regulation by government's financial institutions departments. It is known, however, that the Nova Scotia government has prepared itself for the possibility of more stringent regulation in this area. The Joint Forum's policy statement incorporates any laws or regulations that relate to the principles set out in the policy. If any of the principles are inconsistent with the provisions of PIPEDA, the federal Act will take precedence.

The insurance industry has a number of self-regulating bodies whose aim is to harmonize regulation of insurance across the country: The Insurance Brokers' Association and the Insurance Bureau of Canada. They have created privacy policies for their members because of the significant economic impact privacy concerns have on the insurance industry.

The personal information they collect from their customers includes:

- their names, addresses, telephone numbers, e-mail addresses, date of birth and marital status;
- claims history;
- credit records and past payment records;
- drivers' record;

- the value of their homes and its contents;
- medical information;
- employment information.

Customers would have a high expectation that this information would remain confidential. Misuse by an insurance company would, I expect, very quickly lead to a seriously reduced market share.

It appears that the practices of the insurance industry in Nova Scotia will not significantly change when PIPEDA takes effect in that province. Insurance companies already promote substantive compliance with the PIPEDA.

Credit Unions

Credit Unions, of course, also have policies of confidentiality where all staff and directors sign confidentiality agreements. In preparation to comply with PIPEDA most credit unions have adopted the privacy code that meets federal requirements and industry guidelines... as well as a privacy policy. I am told the procedures to support the policies and Code are being developed and training sessions are planned.

Credit Unions agree they have some work to do related to PIPEDA: revising documentation, providing information on privacy to all members, ensuring privacy agreements with suppliers. However, they can follow the lead of banks which are already regulated by PIPEDA and have adjusted their forms and policies.

They've had few requests from members with respect to privacy and would not support provincial legislation because they believe it would complicate their business practices significantly where they deal with national suppliers, and federally incorporated subsidiaries.

Administrative oversight:

Although industry organizations and the Superintendent of Financial Institutions now oversee the actions of financial institutions, neither provides specific enforcement mechanisms.

In contrast PIPEDA mandates a number of specific enforcement mechanisms. It

includes three levels of review.

1. A customer may approach a designated individual at the organization;

2. A customer may file a written complaint against a company with the Privacy Commissioner; and

3. After receiving a report from the Commissioner, a customer may apply to the Federal Court of Canada, trial division for a hearing with respect to any matter in the Commissioner's report.

As a result of these enforcement mechanisms, financial institutions may expect to spend more money and time on privacy regulatory matters as of January 2004, if customers register complaints with the Commissioner and/or the Federal Court. But it is best to avoid complaints by having solid policies in place to protect privacy before 2004.

Efficiency:

That aside, financial institutions would expect that PIPEDA would provide a reasonable and efficient way to regulate them. The Insurance Board of Canada has provided a number of guidelines for assessing efficiency:

- strong regulatory safeguards to enhance and maintain confidence in the financial services sector;
- low implementation costs;
- no distortion of the competitiveness of markets;
- accommodation for changing market practices;
- providing accountability of regulators and business; and
- not overly prescriptive.

Financial institutions in the Atlantic Provinces appear satisfied that PIPEDA provides a national standard for protecting personal privacy in Canada. Requiring different approaches for the treatment of personal information may distort the competitiveness of inter-provincial financial institutions and create uncertainty for industries which may fall under both provincial and federal jurisdiction.

Opponents of PIPEDA's application to the provinces say the Act was created to

address large, federally-regulated organizations such as banks and airlines and that smaller organizations will have fewer resources to devote to privacy regulation. This complaint may be without merit. PIPEDA provides general principles calling for consent, accountability and procedural safeguards that may be implemented in a number of ways. Small organizations will use "low tech" solutions (locking doors and cabinets and shredding records) and the big ones will resort to "high tech" policies (separate databases, firewalls and encryption technology). As long as the principles in Schedule 1 of the Act are maintained, differences may not be relevant.

Summary:

- None of the Atlantic Provinces appears to be developing privacy legislation at the moment. The provinces' access legislation, of course, requires "public bodies", which in Nova Scotia includes hospitals, universities and school boards, to protect against the unreasonable invasion of an individual's personal privacy.

- Financial institutions in the Atlantic Provinces, satisfied with PIPEDA, have made up their minds that they do not want to be governed by provincial privacy legislation and that PIPEDA will be efficient and manageable.

Conclusions:

Financial institutions in the Atlantic Provinces are prepared to make the necessary adjustments with respect to re-examining their existing privacy protection practices and policies. They do not want provincial legislation.

There should be no conflict with the work of the Superintendents of Financial Institutions. The Nova Scotia Superintendent said she rarely receives complaints with respect to personal privacy.

As you know protecting personal privacy is a growing concern among Canadians. Meeting that concern is not only good business, but is appropriate.